IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

CRP.No. 899 of 2007()

---

IA 38/06 IN OS.11/2006 of II ADDL.SUB COURT,ERNAKULAM

.....

REVN. PETITIONERS: RESPONDENTS 2 TO 8/DEFENDANTS 2 TO 8

---

1. SEBASTIAN @ CHINNAPPAN, AGED 56 YERS,
   S/O.LATE JUSSE, THOTTAKATH HOUSE,
   KANDANAD, KOTHAD P.O.

2. FRANCIS XAVIER @ SIMON, AGED 53 YEARS,
   S/O.LATE JUSSE, THOTTAKATH HOUSE,
   KANDANAD, KOTHAD P.O.

3. T.J.PAUL @ MANI, AGED 48 YEARS,
   S/O.LATE JUSSE DO. DO. DO.

4. BYJU T.T., AGED 34 YEARS,
   S/O.LATE THOMAS, DO. HOUSE, DO. DO.

5. SURESH THOMAS, AGED 31 YEARS,
   S/O.LATE THOMAS DO HOUSE, DO. DO.

6. SUNI, W/O.SANTHOSH, AGED 33 YEARS,
   KOLARIKKAL HOUSE, SOUTH CHITTOOR.

7. MARY @ KUNJAMMA, AGED 55 YEARS,
   W/O.LATE THOMAS, THOTTAKATH HOUSE,
   KANDANADU, KOTHAD P.O

BY ADV. SRI.BABU CHERUKARA

RESPONDENTS: IST PETITIONER/IST PLAINTIFF
---

1. ROSY @ THANKAMMA, AGED 60 YEARS,
   W/O.LATE P.J.GEORGE, PANDARAPARAMBIL HOUSE,
   MULAVUKAD P.O., PONNARIMANGALAM, KOCHI - 682 504.

2. SALOMI, AGED 50 YEARS,
   W/O.DR.P.Y.JOY, POOVENKERI HOUSE,
   PADIVATTOM, EDAPPALLY P.O.,
   KOCHI - 682 024.

3. RANI, AGED 45 YEARS, W/O.M.P.CHINNAPPAN,
   MANAKKIL HOUSE, MADAPLATHURUTHU,
   MOOTHAKUNNAM P.O., ERNAKULAM DISTRICT,
   PIN - 683 516.

4. BABY, S/O.ABRAHAM, AGED 64 YEARS,
   KOLARIKKAL HOUSE, PUTHENPALLY,
   VARAPUZHA, ERNAKULAM (DISTRICT).

5. LINDA, D/O.BABY, AGED 39 YEARS,
   KOLARIKKAL HOUSE, PUTHENPALLY,
   VARAPUZHA, ERNAKULAM DISTRICT.

6. SINDHU, D/O.BABY, AGED 37 YEARS,
   DO DO.

7. RAJESH, S/O.BABY, AGED 35 YEARS,
   DO. DO. DO.

8. VIRONI (DIED ON 14-3-2007)
   W/O.LATE JUSSE, THOTTAKATH HOUSE,
   KOTHADU P.O.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**M.N.Krishnan, J.**

**==========**

**C.R.P.No.899 of 2007**

**==========**

**Dated this the 31ST day of October, 2007.**

**ORDER**

This revision petition is preferred against the order of the Subordinate Judge, Ernakulam in I.A.No.38 of 2006 in O.S.No.11 of 2006. It was an application filed by the plaintiffs to appoint a court guardian for the first defendant. The first defendant is the mother of the plaintiffs as well as the defendants.

2. The contention of the plaintiffs in the suit itself is that the mother is unable to look after herself and she is not in a position to understand the consequences of her action and making use of that situation the sons have made her execute a document which is invalid and that she cannot defend herself in the suit. On the other hand, the defendants would contend that the mother is in a position to understand the consequences of her action. She had entrusted a lawyer and through the said lawyer had filed a written statement and contested the case or in other words, it is contended that the appointment of a court guardian is not

necessary for the mother.

3. Unfortunately, during the pendency of the proceedings, the mother died and so, the issue of appointing a guardian for her to defend the suit does not survive. Still the apprehension in the mind of the defendants is that whether the evidence discussed by the court below in the order would be taken as conclusive evidence to hold against them. At the outset, I may point out that the scope of the enquiry to appoint guardian under Order 32 Rule 15 of C.P.C. is to a limited extent only to analyse and find out whether the person is able to understand the consequences of his or her action and whether he or she will be in a position to file or defend the suit. I find that the learned Subordinate Judge has dealt with the matter very elaborately taking into consideration the documentary evidence, her admission, etc.

4. Now so far as this case is concerned, it goes back to the date of execution of the document and the mental capacity of the person is to be ascertained and confined to that date and not to a later date. So, I make clear that while the matter is being disposed of by the Subordinate Judge he must bear in mind the

question to be considered regarding the mental capacity of the person as on the date of instrument which is under challenge and not otherwise. He should not be carried away by the observations made in his own order and the parties must be given full opportunity to adduce evidence in support of their contentions and decide the matter in accordance with law untrammelled by the observations contained in his own order dated 3.2.2007.

Civil Revision Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 1/11